THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.5918 of 2002

05.7.2006

Between:

M.Subba Raidu, S/o.Subbaiah

… Petitioner

AND

The Secretary to Government of Andhra Pradesh,
Revenue Department, Secretariat, Hyderabad
And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.5918 of 2002

ORDER:

The petitioner statedly purchased land admeasuring 360 Sq.yards (Plot No.249) in Kamalapuri Colony, in Ward No.8, Block No.3 of Municipal Corporation of Hyderabad (MCH) under registered sale deed dated 25.11.1996. He also purchased another extent of 212 Sq.yards in survey No.348 situated at Kamalapuri Colony of Shaikpet Village in Hyderabad abutting the plot No.249 under another registered sale deed dated 27.6.2001 from Dr.Mir Akbar Ali Khan. He thereafter demolished old structures, obtained building permission from MCH on 12.4.2001 and took up the construction. It is alleged that when the construction was going on, the officials from the office of the third respondent came to the site on 20.3.2002 and instructed the workmen to stop the construction. Therefore, the petitioner approached the third respondent requesting to furnish the reasons for directing to stop the construction. There is no response. Therefore, he filed the instant writ petition.

This Court while admitting the writ petition on 25.4.2002 passed interim orders directing the respondents not to interfere with the construction activity of the petitioner in plot No.249, Type-B, Phase-II, Kamalapuri Colony, Hyderabad forming part of survey No.348 in Ward No.8, Block No.3 of MCH. The respondents then moved W.V.M.P.No.1657 of 2002. By an order dated 17.7.2002, this Court made the interim direction absolute observing that any construction made by the petitioner will be subject to the result of the writ petition. It is now brought to the notice of this Court that the petitioner has already completed construction.

Along with the application to vacate stay, the Mandal Revenue Officer, Shaikpet Mandal (MRO), filed a counter affidavit. It is stated that Mohammed Imam Ali is shown to be pattadar of the land admeasuring Acs.12.10 guntas situated in survey Nos.346 to 349 of Shaikpet village, that he sold the land to one M.A.Hasan Ali, who got mutation in his favour in the revenue records and that subsequently M.A.Hasan Ali migrated to Pakistan. Thereafter, land in survey Nos.346 to 349 was declared as evacuee property by notification dated 20.11.1951. It is alleged that as the petitioner is claiming the property through one Dr.Meir Akbar Ali Khan, who was issued a certificate under Section 38(E) of A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950, mistakenly, he cannot claim any right in respect of evacuee property. A reference is made to a pending writ petition being W.P.No.6604 of 1994 filed by Mir Ahmed Ali Khan, father of the petitioner's vendor, challenging the interference by the revenue authorities. The allegation that the revenue officials interfered with the property is denied stating that in view of the *status quo* orders passed in W.P.No.6604 of 1994, the question of interference does not arise.

The matter was listed yesterday. This Court heard the arguments of the learned Counsel for petitioner. Learned Assistant Government Pleader for Revenue (General) reported that the case is being handled by the Office of the Advocate General, but there was no representation for Advocate General and none was present. Therefore, this Court directed the matter to be adjourned to today under the caption 'for Judgment'. Ms.Mohana, learned Assistant Government Pleader attached to the Office of the Advocate General, seeks adjournment. Having regard to the submission made by learned Counsel for the petitioner, this Court is not inclined to grant adjournment and, therefore, the matter is being disposed of by this order.

Learned Counsel for the petitioner brought to the notice of this Court the judgment of this Court in W.P.No.6604 of 1994 and batch dated 15.9.2003 and submits that the said judgment settles the question whether the property in question is evacuee property or not. The said writ petition was filed initially by Mir Ahmed Ali Khan, father of the petitioner's vendor. After the death of Mir Ahmed Ali Khan, the petitioner's father, Dr.Mir Akbar Ali Khan, and one Mir Hamid Ali Khan were brought on record as legal representatives of the petitioner deceased in W.P.No.6604 of 1994. A contention was raised on behalf of the respondents that the property is evacuee property. This Court

perused the record produced and observed as under.

> It is not in dispute that one Imam Ali was the original owner and pattedar of the said land. The litigation in this case started for the first time when Capt.DSMS Hanspal made a claim that the original owner and pattedar Imam Ali had sold the said land to Col.M.A.Hassan, who after independence stated to have migrated to Pakistan and as such it became and evacuee property and it was subsequently allotted to him. As seen from the records produced before this Court the claim made by Capt.DSMS Hanspal in the year 1952 that the said land is a evacuee property, was rejected by both the authorities i.e. by the Dy. Custodian and the Additional Custodian holding that the said land is a non evacuee property and the said proceedings attained finality.

This Court also adverted to the notification No.229 dated 20.11.1951 under which the land in survey Nos.346 to 349 of Shaikpet Village was allegedly declared as evacuee property, and rejected the same observing as under.

> Even accepting the contention of the learned counsel for respondent No.1 that the properties of Col.M.A.Hasanpal were declared as evacuee properties under notification NO.229, dated 20.11.1951, a perusal of the notification it is clear that the properties mentioned therein refers to Sy.Nos.346 to 349 of Yellareddyguda whereas the subject land is in Sy.Nos.346 to 349 of Shaikpet Village, Golconda Mandal.
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> Inasmuch as name of Imam Ali was shown to be the owner and pattedar of the said land till an application was made by the petitioner seeking to issue ownership certificate under Section 38(E) of the Hyderabad Tenancy and Agricultural Lands Act, 1950, who having paid the price of the land to the sons of Imam Ali before the RDO who endorsed and issued ownership certificate, and consequent to which the name of the petitioner was recorded as protected tenant in the revenue records, the respondents are not justified in interfering with the said land of the petitioner.

As the title of the petitioner's vendor to the property has been accepted by this Court in collateral proceedings, insofar as this writ petition is concerned, there is no strong reason to take a different view. If the Government still claims that the land as evacuee property, subject to the judgment of this Court in W.P.No.6604 of 1994, it shall be open to the Government to agitate the matter in an appropriate forum.

The writ petition is, therefore, disposed of observing that in view

of the disposal of W.P.No.6604 of 1994 by this Court, there cannot be any valid reason for the respondents to interfere with the construction activity undertaken by the petitioner. The respondents shall pay the costs of the petitioner quantified at Rs.2,000/- (Rupees Two thousand only).

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(**V.V.S.RAO,J**)

July 05, 2006.
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